IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3011 OF 2005

Mahendra Bhagvatrao Desai : Petitioner

V/s.

Satara Zilla Parishad Sahakari Malaki Grihanirman Sanstha Limited & Ors. : Respondents

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Mr.U.P.Warunjikar for the petitioner.

Mr.R.V.More for the respondent no.1.

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CORAM : S.A. BOBDE, J.

July 22, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.More, learned counsel, appears and waives service of rule on behalf of the respondent no.1.

Heard by consent.

2. The petitioner challenges the order rejecting his objection under Order 21 Rule 97 of the Code of Civil Procedure. The Executing Court found that he is not entitled to resist the execution of the decree obtained by the respondent no.1 Sanstha.

3. The respondent no.1 had obtained a decree in respect of the plot in dispute i.e. plot no.32 and obtained a decree dated 30.4.1981 for recovery of a sum of Rs.32,333.75 against one Bhagwantrao, who was a member of the society. There is no dispute that Bhagwantrao made a statement before the executing Court that he is not in a position to make payment of the decretal amount and that the society may take possession of the said plot with the bungalow standing thereon. In fact, this statement is referred to by the petitioner himself in his application under Order 21 Rule 97 vide paragraph 5. Thereafter, it appears that Shevantabai whose relationship with Bhagwantrao is not clear appears to have obstructed the execution of the decree. The matter came up before this Court and this Court while disposing of the matter, viz., Smt.Shevantabai Sakharam Jadhav v. Satara Zilla Parishad Sahakari Malki Griha Nirman Sanstha Ltd. & Anr., reported in (2000 (3) All M.R. 221), on 29.9.1999 observed in para 9 that there was nothing on record to show that the present petitioner Mahendra was the son of Bhagwantrao Desai and that his mother (the petitioner therein) who claimed to have made certain payment to the society had questioned her status to make any payment. This Court accepted that Shevantabai i.e. the petitioner's mother did not acquire any right by paying the instalment amount

which the society did not except, however, she was not a tenant in respect of the said plot.

4. Thereafter, it appears that the petitioner moved the present application claiming his right to the property i.e. plot no.32 as son of Bhagwantrao. In paragraph 4, he claims that he constructed the bungalow on the property out of the funds of his mother Shevantabai who paid certain amount to the society. It is clear from the application that the petitioner is not claiming any independent right to the property, but is claiming in his capacity as the son of Shevantabai who, according to him, is the legally wedded wife of Bhagwatrao.

5. There is no merit in this obstruction. Bhagwantrao himself surrendered his right in the property expressing his inability to pay the dues. Shevantabai has been found to have no right in the property by this Court. The petitioner is certainly not claiming any independent right in the property but through the aforesaid persons who themselves have been found to have no right.

6. In these circumstances, I see no error of law, jurisdictional or otherwise, in the order of the executing Court holding that the petitioner cannot be a person

entitled to resist execution. It is settled law and this was clearly not disputed by the learned counsel for the petitioner that no person can obstruct the execution, if he claims through the judgement-debtor, but his objection may be considered only if he has an independent right. This principle has been upheld by this Court in Chavdas Totaram v. Papilabai, reported in [1999 (3) Mh.L.J. 42].

7. Accordingly, there is no merit in the petition which is hereby dismissed. The rule stands discharged.

8. The learned counsel for the petitioner states that the petitioner, if so advised, may apply to the executing Court for time to vacate. The petitioner shall be at liberty to apply for such time and the executing Court shall consider granting such time as may be considered appropriate, after hearing the society, and on usual terms.

Sd/-

S.A. BOBDE, J.